

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the matter of:

Alaska General Seafoods
Ketchikan, Alaska

Respondent.

DOCKET NO. CWA-10-2001-0054

ADMINISTRATIVE COMPLAINT

I. AUTHORITIES

1. This administrative complaint for civil penalties ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA" or "Complainant") by Section 309(g)(2)(B) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g)(2)(B). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 10, who in turn has redelegated it to the Director, Office of Water.

2. Pursuant to Section 309(g)(2)(B) of the Act, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22 ("Part 22 Rules"), Complainant hereby proposes the assessment of a civil penalty against Alaska General Seafoods ("Respondent") for the unlawful discharge of pollutants into navigable waters in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

II. ALLEGATIONS

3. Section 402 of the Act, 33 U.S.C. § 1342, provides that EPA may issue National Pollutant Discharge Elimination System ("NPDES") permits for the discharge of any pollutant into waters of the United States upon such specific terms and conditions as EPA may prescribe.

4. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except as authorized by an NPDES permit or other specified statutory sections.

5. Respondent owns and operates the Alaska General Seafoods facility located at 980 Stedman, Ketchikan, Alaska 99901 ("Facility").

6. Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

7. Respondent is authorized to discharge pollutants from the Facility under General NPDES Permit No. AK-G52-0090 ("Permit"). The Permit became effective on August 4, 1995, expired on August 4, 2000, and is currently administratively extended.

8. The Facility, which was under Respondent's control at all times relevant to this action, discharged seafood process waste. Seafood process wastes are pollutants within the meaning of Section 502(6) and (12) of the Act, 33 U.S.C. § 1362(6) and (12).

9. The Facility, which was under Respondent's control at all times relevant to this action, discharged pollutants from its seafood process waste outfall ("Outfall"). The Outfall is a point source, within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

10. The Facility, which was under Respondent's control at all times relevant to this action, discharged pollutants from the Outfall to Tongass Narrows which is waters of the United States, as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7).

11. Section V.C.1.b of the Permit states that Respondent shall not discharge waste solids from the end of the pipe that exceed one half (0.5) inch in any dimension.

12. Part V.C.1.f.(3) of the Permit specifies that Respondent shall not discharge seafood sludge, deposits, debris, scum, floating solids, oily wastes, or foam which alone or in combination with other substances cause a film, sheen, emulsion, or scum on the surface of the water.

1 13. Part V.C.1.e of the Permit specifies that Respondent shall not discharge any other such
2 wastewaters that contain foam, floating solids, grease, or oily wastes which produce a sheen on the
3 water surface.

4 14. Part V.C.1.g of the Permit states that discharges shall not violate Alaska Water Quality
5 Standards for floating or suspended residues, dissolved oxygen, oil and grease, fecal coliform, pH,
6 temperature, color, turbidity, and total residual chlorine beyond the mixing zone.

7 15. Part V.C.1.g of the Permit specifies that Respondent shall not discharge in violation of
8 Alaska Water Quality Standards for settleable solid residues beyond a one (1) acre zone of deposit.

9 16. On July 11 and 12, 2000, EPA conducted an NPDES inspection of the Facility including
10 the Outfall and the area surrounding the Outfall.

11 17. During the July 11 and 12, 2000 inspection, the EPA inspector observed that Respondent
12 discharged seafood process waste with dimensions greater than 0.5 inches.

13 18. During the July 11 and 12, 2000 inspection, the EPA inspector observed that Respondent
14 discharged seafood sludge, deposits, debris, scum, floating solids, oily wastes, or foam which alone
15 or in combination with other substances cause a film, sheen, emulsion, or scum on the surface of the
16 water.

17 19. During the July 11 and 12, 2000 inspection, the EPA inspector observed that Respondent
18 discharged wastewaters that contained foam, floating solids, grease, or oily wastes which produced a
19 sheen on the water surface.

20 20. On October 7, 1999, EPA sent the Facility a Clean Water Act Section 308 Information
21 Request. In a letter dated November 16, 1999, the Facility responded by submitting Dive Surveys
22 for the years 1996 through 2000. These Dive Surveys showed, that during the discharge season of
23 2000 (a period of at least 86 days), the Facility discharged pollutants in violation of Alaska Water
24 Quality Standards for settleable solid residues beyond a one (1) acre zone of deposit.

25 21. The violations alleged in paragraph 17 through 19 above, arising from the July 11 and 12
26 inspection, constitute at least seven violations over two days of Section 301(a) of the Act, 33 U.S.C.
27 § 1311(a).

1 22. The violations alleged in paragraph 20 above constitute at least 86 days of violation of
2 the Facility's zone of deposit, during the 2000 discharge season. These violations constitute 86
3 violations of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

4 23. For the violations described above, under Section 309(g)(2)(B) of the Act and the Debt
5 Collection Improvement Act of 1996, 31 U.S.C. § 3701, Respondent is liable for the administrative
6 assessment of civil penalties in an amount not to exceed \$11,000 per day for each day during which
7 a violation continues, up to a maximum of \$137,500.

8 **III. PROPOSED PENALTY**

9 24. Based on the foregoing authorities and allegations, Complainant hereby proposes to issue
10 a Final Order assessing administrative penalties against Respondent, for the violations cited above,
11 in the amount not to exceed ONE HUNDRED THIRTY SEVEN THOUSAND FIVE HUNDRED
12 DOLLARS (\$137,500).

13 25. The proposed penalty amount was determined by Complainant after taking into account
14 the nature, circumstances, extent, and gravity of the violations; Respondent's ability to pay, prior
15 history of violations, degree of culpability; economic benefit and savings resulting from the
16 violations, and other appropriate factors, to the extent the information is available for such
17 determinations.

18 26. The violations described above are significant. Depositing seafood waste in excess of a
19 one (1) acre zone of deposit increases the settleable materials on the sea floor. Settleable materials
20 which blanket the bottom of water bodies damage the invertebrate populations, and remove
21 dissolved oxygen from overlying waters. The presence of scum and foam on the surface of a water
22 body can increase turbidity. Turbid water interferes with recreational use and aesthetic enjoyment of
23 water. Turbid water also has the potential to decrease the depth of light penetration into the water
24 body, thereby reducing the depth of the photic zone. This reduces primary production and
25 decreases fish food. Additionally, with the increase in turbidity, the near surface waters are heated
26 because of the greater heat absorbency of the particulate material which tends to stabilize the water
27

1 column and prevent vertical mixing. Such mixing reductions decrease the dispersion of dissolved
2 oxygen and nutrients to lower portions of the water body.

3 27. Based on the information available to EPA regarding Respondent's financial condition,
4 Respondent appears able to pay the proposed penalty.

5 **IV. OPPORTUNITY TO REQUEST A HEARING**

6 28. Respondent has the right to file an Answer requesting a hearing on any material fact
7 contained in this Complaint or on the appropriateness of the penalty proposed herein. Upon request,
8 the Presiding Officer may hold a hearing for the assessment of these civil penalties, conducted in
9 accordance with the provisions of the Part 22 Rules and the Administrative Procedure Act, 5 U.S.C.
10 § 551 *et seq.* A copy of the Part 22 Rules accompanies this Complaint.

11 29. Respondent's Answer, including any request for hearing, must be in writing and must be
12 filed with:

13 Regional Hearing Clerk
14 U.S. Environmental Protection Agency
15 1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

16 **V. FAILURE TO FILE AN ANSWER**

17 30. To avoid a default order being entered pursuant to 40 C.F.R. § 22.17, Respondent must
18 file a written Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days after
19 service of this Complaint.

20 31. In accordance with 40 C.F.R. § 22.15, Respondent's Answer must clearly and directly
21 admit, deny, or explain each of the factual allegations contained in this Complaint with regard to
22 which Respondent has any knowledge. Respondent's Answer must also state: (1) the circumstances
23 or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent
24 intends to place at issue; and (3) whether a hearing is requested. Failure to admit, deny, or explain
25 any material factual allegation contained herein constitutes an admission of the allegation.

1 **VI. INFORMAL SETTLEMENT CONFERENCE**

2 32. Whether or not Respondent requests a hearing, Respondent may request an informal
3 settlement conference to discuss the facts of this case, the proposed penalty, and the possibility of
4 settling this matter. To request such a settlement conference, Respondent should contact:

5 Ciannat Howett
6 Assistant Regional Counsel
7 U.S. Environmental Protection Agency, Region 10
8 1200 Sixth Avenue, Mail Stop ORC-158
9 Seattle, Washington 98101
10 (206) 553-7359

11 Note that a request for an informal settlement conference does not extend the thirty (30) day period
12 for filing a written Answer to this Complaint, nor does it waive Respondent's right to request a
13 hearing.

14 **VII. RESERVATIONS**

15 33. Neither assessment nor payment of an administrative civil penalty pursuant to this
16 Complaint shall affect Respondent's continuing obligations to comply with: (1) the Clean Water Act
17 and all other environmental statutes; (2) the terms and conditions of all applicable Clean Water Act
18 permits; and (3) any Compliance Order issued to Respondent under Section 309(a) of the Act, 33
19 U.S.C. § 1319(a), concerning the violations alleged herein.

20 **VIII. QUICK RESOLUTION AND SETTLEMENT**

21 34. In accordance with Section 22.18 of the Consolidated Rules of Practice, Respondent may
22 resolve this action at any time after ten (10) days following the close of public comment on this
23 Complaint by mailing the proposed penalty in full to:

24 EPA Region 10 Hearing Clerk
25 P.O. Box 360903M
26 Pittsburgh, Pennsylvania 15251-6903

27 35. Respondent is advised that, after the Complaint is issued, the Consolidated Rules of
28 Practice prohibit any *ex parte* (unilateral) discussion of the merits of these or any other factually
related proceedings with the Administrator, the Environmental Appeals Board or its members, the

1 Regional Administrator, the Regional Judicial Officer, the Presiding Officer, or any other person
2 who is likely to advise these officials in the decision on the case.

3
4 Dated this ____ day of _____, 2000

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6 _____
7 Randall F. Smith
8 Director
9 Office of Water
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CERTIFICATE OF SERVICE

I certify that the foregoing "Complaint" was sent to the following persons, in the manner specified, on the date below:

Original and one copy, hand-delivered:

Mary Shillcutt, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

Copy, together with a cover letter and copy of the Part 22 Rules, by certified mail, return receipt requested:

Kanaway Seafoods, Inc, Registered Agent
Alaska General Seafoods
6425 NE 175th Street
Kenmore, Washington 98028

Dated: _____
Cindy Phung
U.S. EPA Region 10